COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

KeySpan Energy Delivery New England	)	D.T.E. 05-40

REPLY BRIEF OF KEYSPAN ENERGY DELIVERY NEW ENGLAND

I. INTRODUCTION

This is the reply brief of Boston Gas Company, Colonial Gas Company and Essex Gas Company each d/b/a KeySpan Energy Delivery New England ("KeySpan" or the "Company") relating to a request for approval by the Department of Telecommunications and Energy (the "Department") of firm transportation and related agreements between KeySpan and Union Gas Limited ("Union") and between KeySpan and TransCanada Pipelines Limited ("TransCanada").

Under the agreements, KeySpan would have the right to transport up to 16,794 Dt/day of gas from Dawn, Ontario to Waddington, New York ("Shorthaul Transportation") on three separate Agreements (Boston Gas 8,701 Dt/day, Colonial Gas 6,070 Dt/day and Essex Gas 2,023 Dt/day). Such transportation service is expected to commence on November 1, 2006, upon expiration of the Company's existing bundled supply agreements with Alberta Northeast Gas Limited ("ANE") that are sourced from the production area in Alberta, Canada and delivered to the Company at Waddington, New York. The TransCanada Agreements would continue for an initial term of ten years and the Union agreements would continue for an initial term of eleven years. Once the capacity agreements are approved and the facilities are constructed, KeySpan will enter into separate agreements for the purchase of gas at Dawn. Such gas will be transported by Union from Dawn, Ontario to an interconnection with TransCanada known as Parkway, and then will be transported by TransCanada from Parkway to Waddington. From Waddington, the gas will be transported to the KeySpan city gates on existing capacity contracts with the Iroquois Gas Transmission System ("Iroquois") and the Tennessee Gas Pipeline Company ("Tennessee").

In this reply brief, the Company responds to the issues raised by the Attorney General of the Commonwealth of Massachusetts (the "Attorney General") which was filed on September 30, 2005. In particular, the Company responds to the Attorney General's assertion that the TransCanada agreement exposes KeySpan's ratepayers to "millions of dollars of financial risk" and that customers should be held harmless for any "losses."

II. THE COST SHARING ARRANGEMENT BETWEEN KEYSPAN AND TRANSCANADA IS WARRANTED AND APPROPRIATE UNDER THE CIRCUMSTANCES

As discussed by Mr. Allocca the Company's gas supply agreements with ANE will expire on November 1, 2006. To replace those volumes, the Company has entered into agreements with Union and TransCanada such that new pipeline facilities will be constructed that will allow the Company to purchase supplies at Dawn for transportation to Waddington and then ultimately transported from Waddington to the Company's city gates (KEDNE-1 at 5-6). Prior to entering into those agreements the Company evaluated other reasonably available alternatives and concluded that the Union and TransCanada arrangements were in the best interest of customers (Exh. KEDNE-1 at 6-10). However, in order to meet the in-service date of November 1, 2006 required by the ANE shippers both Union and TransCanada needed to begin pre-engineering and limited construction activity prior to receipt of final regulatory approvals (Exh. KEDNE-1 at 9-10). Therefore, Union and TransCanada required, as a condition of undertaking the projects, that the ANE shippers share in the potential risk that the project does not receive the necessary regulatory approvals (Id at 10).[1] The record in this case demonstrates that KeySpan evaluated the potential financial risk of such a cost sharing arrangement and determined that (i) the risk was outweighed by the benefit to customers and (ii) that the terms sought by TransCanada and Union were reasonable and appropriate (Id., Exh., AG 1-3, Exh. AG 1-14). Moreover, if the Company were to not enter into these agreements its customers would face the virtual certainty of higher gas prices (Exh. AG 1-14).

The Attorney General characterizes the Company's agreement with TransCanada as exposing KeySpan's ratepayers to millions of dollars of financial risk arising from events out of the Company's control (AG Brief at 4). Specifically, the Attorney General contends that KeySpan inappropriately bears all of the risk of reasonably incurred financial obligations and outlays in connection with TransCanada's efforts to bring the

[1] The Company witness, Mr. Allocca, testified that negotiated financial liability provisions are commonplace in contracts that require one party to commit capital resources to meet its obligations on a project where the contract contains conditions precedent that allows the other party a right to terminate prior to the in-service date of the project. The terms of those provisions may differ depending on the particulars of the project and the risk to the party required to invest its capital (Exh. AG 1-12) In its brief the Attorney General contends that the cost sharing arrangement between KeySpan and TransCanada is inappropriately one-sided in that TransCanada has no financial obligation to KeySpan should it cancel the project (AG brief at 4). In actuality, the TransCanada cost sharing agreement appropriately reflects the fact that TransCanada, not KeySpan is the party required to invest its capital prior to receipt of regulatory approvals.

proposed pipeline project on line and that KeySpan's customers should be held harmless by the Company's shareholders for such risks (Id.).[2]

The Attorney General's characterization of the agreement is, however, incorrect. As discussed by Mr. Allocca, KeySpan's financial exposure as a potential shipper on the TransCanada project differs depending upon the cause of cancellation. KeySpan is subject to greater exposure when it has some degree of control over the cause. However, in the event the cancellation is caused by an event that KeySpan has some ability to control, liability can be avoided if a third party shipper can be found to replace KeySpan. (Tr. At 11, RR AG-1).

For those instances when the cancellation is triggered by TransCanada for reason outside of the Company's control, (eg. TransCanada fails to obtain required regulatory authorizations) then, the financial exposure is shared between TransCanada and all of the potential shippers (Exhibit KEDNE-1 at 11-12). Moreover, in all circumstances, TransCanada is required to use commercially reasonable efforts to minimize the project shippers' exposure to financial risk by (i) minimizing costs committed prior to receipt of TransCanada's authorizations and (ii) using the equipment, materials and third party work product associated with the contemplated expansion in another expansion within a reasonable time period. (Exh. KEDNE-1 at 11-12, RR-AG-1). Thus, the maximum financial obligation to KeySpan for an event of cancellation as provided for in the agreement would only be reached if TransCanada constructed the entire project prior to cancellation such complete construction was deemed reasonable under the circumstances,

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[2] The Attorney General does not address the terms of the Company's agreement with Union. Presumably this is because Union received its required approval from Ontario Energy Board on July 6, 2005 and would have no reason to exercise a regulatory out for the project (Exh. AG 1-17)

the project facilities were unable to be used in another expansion project and to the extent the cancellation was caused by KeySpan, a replacement shipper could not be found. The likelihood of all of these events occurring is highly unlikely.

III. CONCLUSION

The record in this proceeding shows that (1) the Company has provided a forecast of sendout requirements consistent with its Supply Plan which demonstrates a need to renew or replace its expiring ANE contracts as of November 1, 2006 in order to continue to reliably meet its customer requirements; (2) the proposed Union and TransCanada agreements compare favorably with a range of reasonably available alternatives based on price and non-price factors; (3) in order to meet the required in-service date, Union and TransCanada must begin pre-engineering and limited construction activity prior to receipt of final regulatory approvals and thus, Union and TransCanada required, as a condition of undertaking the projects, that the ANE shippers share in the potential risk that the project does receive the necessary regulatory approvals; (4) KeySpan evaluated the potential financial risks associated with the cost sharing requirements of TransCanada and Union and determined that the benefit to customers outweighed the potential risks; and (5) failure to enter into the Union and TransCanada agreements would result in higher gas costs for customers. Therefore, the proposed TransCanada and Union agreements represent a cost effective means for the Company to meets its ongoing service obligation to customers, are in the public interest and should be approved by the Department.

Respectfully submitted,

KEYSPAN ENERGY DELIVERY
NEW ENGLAND

By its attorney,

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